

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARIO VALDIVIEZO,

Plaintiff,

AMENDED COMPLAINT  
UNDER THE  
CIVIL RIGHTS ACT, 42 U.S.C §1983

-against-

15-cv-3902(AJN)

THE CITY OF NEW YORK, CAPTAIN BOYER,  
C.O AYOU, JOHN DOE #1, JANE DOE #1  
(MEDICAL PERSONEL)

Jury Trial requested

X

Plaintiff in the above-captioned action, alleges as follows:

1.-This is a civil action seeking relief and damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C §1983. The court has jurisdiction over this action pursuant to 28 U.S.C §§ 1331, 1343(3) and (4) and 2201.

**Parties in this complaint:**

Plaintiff- Mario Valdiviezo #15A2295  
Coxsackie Corr. Fac.  
P.O. Box 999  
Coxsackie, N.Y. 12051

Defendant No.1- The city of New York,

Defendant No.2- Captain Boyer (GRVC)  
09-09 Hazen Street  
East Elmhurst, NY 11370

Defendant No.3- Correction Officer AYOU (GRVC)  
09-09 Hazen St.  
East Elmhurst, NY 11370

Defendant No.4- John Doe  
Emergency Medical Response  
GRVC  
09-09 Hazen St.  
East Elmhurst, NY 11370

Defendant No.5- Jane Doe  
Emergency Medical Response  
GRVC  
09-09 Hazen St.  
East Elmhurst, NY 11370

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 8-1-16

## Statement of Claim

on the date of August 12, 2014 while being a pretrial detainee and housed in the G.R.V.C. facility (Rikers Island) in the Housing unit known as 10-B Cell #9, at approximately 6:00pm, after being lock out, I proceeded to the shower area in order to take a shower upon stepping into the shower area I step on a piece of worn down soap. I immediately fell to the floor and began to writhe in excruciating pain on the unsanitary floor the has not been clean for days due to the inmates strike and Protest against the New Locking procedure being implemented by the city corrections. While I was on the floor in excruciating pain the other detainees began to call Correction officer named Velez, upon C.O. Velez's arrival she inquired as to if I was hurt and in pain. I told her yes! My back, head, and left shoulder hit the floor and was causing excruciating pain. C.O. Velez alerted the officer in the control booth C.O. Ayon and told him to call medical emergency. C.O Ayon totally disregarded my medical needs and safety, instead called Captain Boyer. Violating my Fourteenth Amendment to provide medical care to inmates and pretrial detainees a right guaranteed under the Constitution of the U.S. "The Supreme Court has noted, the prison officials duty is only to provide reasonable care in response to an inmate health risk, failing to take reasonable measures" in response to a medical condition, delaying in providing an inmate access to needed medical care consist of cruel and unusual punishment.

Captain Boyer who took approximately 20 minutes upon reaching the housing unit, went into the control Booth and while being aware of the situation instead of take reasonable measures to ensure the medical needs, began to make statements that he thought someone had pushed me and he was going to check the Video Camera all the while I was left laying on the unsanitary floor. I was left on the floor for no less than hour in pain while people stepped over me going back and forth taking showers. When the medical response team came they instructed the detainees standing around to lift me up and upon the detainees lifting me up they dropped me back to the floor causing me to cry out in more excruciating pain. The medical personnel again told the detainees to pick me up the second time, However, while trying to carry me out of the shower dropped me a second time making me loose consciousness due to the unappropriated training and duty of the medical personnel. This unconstitutional, unsanitary deplorable conditions is an environmental health hazard the I sustained for a period of 18 month in a Maximum Facility, having a classification of 3 below the minimum requirement which is 6 to be place in the housing of 10-B at the G.R.V.C. I was subject to an Health hazard environment, were the showers were used as urinals and smelled of urine were constant tiles were missing not only on the walls but the floor as well, taking a risk of hurting and cutting someones feet and contract an infection, corroded walls, ceiling and pipes throughout the first tier, water worms were found in the showers on multiple occasions, dried and corroded paint falling from pipes, walls, ceiling, and showers, during those 18 months it were never shower pads or mats to stand on.

Complaints and grievances regarding these incidents were made which on few occasion the city send individuals to inspect the condition and while I was working in paint detail at the G.R.U.C. I witness and were instructed to paint over the corruded walls, Ceiling and pipes and to clean the showers without proper machinery and inadequate. To just cover over temporally the problem and not remedy the problem is not fixing it at all. This Violation of civil rights are protected by the Federal Law which forbids Cruel and unusual Punishment.

Right after that incident at the G.R.U.C. on the month of September I was transfert to the G.M.D.C. facility and housed in a Mental health unit known as 3 Main B-Side in which the D.O.C. (The city of New York) failed to provide proper care, custody and control on the following dates:

On Dec. 31, 2014 from 9:00PM to Jan 1, 2015 7:00AM exposure to extreme behavior of severe prisoner from the top floor, sleep deprivation due to the constant screaming and flooded cells and tier from the polluted water the was coming down from the top floor down to our housing unit, Not only we were forced and obligated to lock-in, but not allowed to clean our cells, the improper training of the correctional officers by not taking proper measures and by not controlling the extreme behavior of severely prisoners during the whole night and the disregard and attending of a Mental health unit by taking measures to remedy the problem at that time due to rules and regulations but yet not implementing those rules and regulations to the top floor (Main source of problem) Violating the Fourteenth Amendment. In addition on Jan 19, 2015 I was exposure to Sewage and Human waste due to a flooding the started at 2:00pm and last it to 9:00PM in which all cells, tier and pantry were flooded with polluted water and feces.

Forced to Eat surrounded by noxious fumes and unsanitary condition with no indication by the correctional officers or Captains to be moved to a different unit or least to let us eat at the messhall. Although the Violations was about it after word it was a Violation of the Fourteenth Amendment by not taking measures and by exposing us to an environmental health hazard.

In both occassion the 3 Main B-side Cells, tier and pantry were clean by us detainees it was never discontaminated, an inadequate procedure for a Mental health unit. Complaints and grievance were made by most of the detainees (which is on records) but answer were never meet.



## **INJURIES**

Having lost conscious after being drop twice, woke up in the facility clinic, I complained of injury to my back, left shoulder, neck, impaired vision and a searing headache. The Ambulett service was contacted and had me transferred to Elmhurst Hospital.

## **CAUSE OF ACTION**

### **FIRST CAUSE OF ACTION:**

The city of New York (D.O.C) in their official and individual capacity did fail to provide a safe and sanitary enviroment, by allowing plaintiff to an enviromental Health hazar. Housed for a sustained period of 18 months of unconstitutionally unsanitary deplorable conditions, disregard it and failed to remedy properly the risk after after being informed throught grivance by several inmates in the housing unit regarding the showers and housing conditions. This violation of civil rights are protected by the Federal Law which forbids Cruel and Unusual Punishment.

### **SECOND CAUSE OF ACTION:**

The city of New York (D.O.C) in their official and individual capacity did show a deliberate indifference to the conditions of the housing unit known as 10-B of the G.R.V.C facility went:

- 1.-Failed to remedy properly by having inmates/detainees and not professionals to cover the issues and not really fixing it pro-  
perly.
- 2.-By not adding a restroom in the housing unit instead letting continuing use the showers as a urinal.
- 3.-By not implementing the policy of safety,order,rules and regulations; were detainee work stoppag caused deplorable housing conditions(showers/pantry) due to the inmates/detainee in protest of the new regulations being employed by city corrections which mandate a new locking time of 9:00pm instead of 11:00 pm.

Defendants failed to take reasonable measure to ensure the health and safety of plaintiff intheir custody.

### **THIRD CAUSE OF ACTION:**

Defendant C.O Ayou in his official and individual capacity did fail to employ the proper response for when a inmate/detainee is known to be injured and in state of pain, failed to notify and make contact with the facility medical staff as soon as he was notified by C.O Velez. Dfendant knew of and disregarded plaintiff medical need, this conduct deprived the plaintiff of a right guaranteed under the constitution of the United States.

**FOURTH CAUSE OF ACTION:**

The Government is obligated to provide medical care to the inmates and pretrial detainees under the Eighth and Fourteenth Amendments, which imposes upon it a corresponding duty to assume some responsibility for his safety and general well being. Defendants, in their official and individual capacity, did show a deliberate indifference to plaintiff's immediate medical needs by failing to attend to him without delay. Captain Boyer, who came to the scene of the incident after 20 minutes had passed and then sought to place blame on other inmates/detainees instead of making sure that the health and well-being of the Plaintiff was taken care of. "A supervising officer who is aware of a substantial risk of serious harm or medical urgency is obligated to take steps to prevent and ensure the inmate's/detainee's safety." In this case, Defendants knew of and disregarded Plaintiff's need of medical care by procrastinating and delaying access to medical needs is consistent with Cruel and Unusual Punishment.

**FIFTH CAUSE OF ACTION:**

The City of New York, in the operation of the New York City Department of Correction in the employment of correctional staff, has failed to properly train, retain and supervise qualified personnel in the exercise of care, custody, and control, to wit: The proper manner in providing reasonable measures to ensure the safety and medical care of inmates/detainees in their custody. This cause of action should have been prevented by having the right training and the right staff members exercising their duties.

**SIXTH CAUSE OF ACTION:**

The City of New York, in contract with the medical provider, has failed to employ individuals who were qualified to provide the proper care to prevent further injury to the Plaintiff without carefully training the medical provider in the proper manner, which allowed the injury to Plaintiff to be exasperated by Plaintiff being dropped, not once but twice, when haphazardly instructed the inmates to pick plaintiff up. This cause of action should have been prevented by having the right training and the right staff members exercising their duties.

**SEVENTH CAUSE OF ACTION:**

John Doe #1 failed to administer proper medical protocol when he arrived on the scene and instructed the inmates to lift the Plaintiff in a careless and haphazardous manner, not once, but twice was Plaintiff dropped to the floor based on faulty instructions given to the inmates by this medical respondent.

**EIGHTH CAUSE OF ACTION:**

Jane Doe #1 failed to administer proper medical protocol when she arrived on the scene and instructed the inmates to lift the Plaintiff in a careless and haphazardous manner. Not one but two (2) times was Plaintiff dropped to the floor based on faulty instructions given to inmates by this medical respondent.

**NINTH CAUSE OF ACTION:**

The City of New York, in the operation of their correctional facility known as GMDC did fail to provide proper care, custody, and control by allowing Plaintiff and other inmates to live in squalor and unsanitary conditions, which included human feces coming out of the drains along with other waste. These conditions were experienced in the 3 Main, B-side on the date of January 19, 2015. Several grievances were filed on this matter.

Relief:

Plaintiff is seeking to be compensated for the various civil rights violations exacted against him as stated in the above claims for compensatory and punitive damages for the stated amount of **ONE HUNDRED THOUSAND DOLLARS.**

NO PREVIOUS LAW SUIT DEALING WITH THE SAME FACTS WAS FILED.

YES I HAVE FILED OTHER LAW SUITS DEALING WITH MY IMPRISONMENT.

PARTIES TO PREVIOUS LAW SUIT:

Mario Valdiviezo

-against-

(Eastern District of New York)

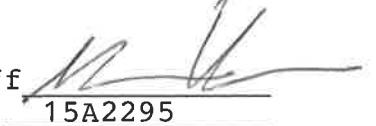
Willian Greer,  
Kimberly Marshall,  
John Bolden, and  
The City of New York.

14CV4897 (SLT) (LB)  
Justice Sandra L. Townes  
Filed 7/25/15

I declare under the penalty of perjury that the forgoing is true and correct.

Signed this 26 day of July, 2016

Signature of Plaintiff  
Inmate Number

  
15A2295

Institution

Coxsackie C.F.  
P.O. Box 999  
Cox. NY 12051

I declare under the penalty of perjury that on this 26, day of July, 2016, I am delivering this complaint to prison authorities to be mailed to the Pro Se Office of the United States District Court for the Southern District.



